IN THE HIGH COURT OF UTTARANCHAL
AT NAINIATL
Civil Writ Petition No. 124 (S/B) of 2002

Shyam Lal & others … Petitioners

Versus

Indian Oil Corporation Ltd.
l.O.C. Bhawan Kapoorthala Complex
Aliganj, Lunknow through its
Deputy General Manager & others … Respondents

Hon'ble M.M. Ghildiyal, J.

Heard Sri M.C. Pant learned counsel for the petitioners and Sri Jagat Arora learned counsel for the respondent.

By means of this writ petition the petitioners have prayed for a writ, order or direction in nature of mandamus commanding the respondents to allow to continue the petitioners in service and not to make any hurdle or hindrance in the working of the petitioners and further to pay them their wages month to month as they were getting earlier and also allow them to continue with the new intermediary system introduced by the respondents.

As stated in the petition the petitioners are working for the last so may years in the Plant against the work of house-keeping, haulage, peon etc. The work is permanent and continuous in nature. The respondents just to avoid the benefits under various laws to the petitioners have introduced intermediary M/s T. S. & Company, Narendra Kutir, Jawalapur District Haridwar and the petitioners have been treated as contractual labour. The petitioners have filed representation on 31.07.1999 and also made complaint against the contractual system to the Assistant Labour Commissioner – Central. The Assistant Labour Commissioner – Central found the labour license of haulage contract only for 20 contract labourers while 35 persons were found working and as such revoked the license and also forfeited the deposited amount. The Plant of the respondent is registered under the Factory Acts. The petitioners have already completed more than 240 days and as such, they are entitled for regularization.

The respondents have entered in a Memorandum of Contract with one M/s Ramesh Chandra Agarwal for doing the work of haulage who has stopped the petitioners to work w.e.f. 01.01.2002 in the aforesaid circumstances, the petitioners have filed this writ petition.

The respondents have filed counter affidavit. in the counter affidavit, the respondents have submitted that the respondent Corporation Plant at Haridwar is engaged in bottling L.P.G. in the cylinders which is received in bulk. The respondent Corporation has been declared to be a controlling industry under section 2 of the Industrial (Development & Regulation) Act, 1951 and the Central Government would be the appropriate Government for the purpose of Industrial Disputes Act, 1947.

The petitioners were admittedly the employees of the contractor M/s T.S. & Company engaged by the respondent – Corporation. The petitioners not made party the contractor (M/s T.S. & Company) and as such the petition is not maintainable for non-joinder of necessary party. It has been further submitted that since disputed question of facts have been raised by the petitioners, the petition is not maintainable. In view of the judgment of Hon'ble Supreme Court in the case of Steel Authority of India (AIR, Supreme Court 2001 page 3527).

It is not disputed that the petitioners were the employees of contractor engaged by the respondent and after the license of the earlier contractor was revoked, new contractor has been engaged. Neither the new contractor nor the old one has been impleaded by the petitioners as a party in the writ petition. Further, in view of the judgment of the Hon'ble Supreme Court in the case of Steel Authority of India (Supra), the writ petition article 226 is not maintainable to decide the disputed question of facts. The petitioners have a remedy before the Industrial Court (Central). In para 2 of the counter affidavit the respondent has submitted as under:-

> *"Contents of para 2 are wrong and denied. It is emphatically denied that the petitioners have been working*

continuously for 6 to 11 years against the house-keeping, haulage or for job of the peons etc. It is stated that the petitioner No. 2, 3, 9, 11, 12, 14, 19, 22 and 23 were working for M/s T.S. & Company who was providing haulage services to the respondent – Corporation. The contract of the said company came to an end on 31.12.2001 and thereafter M/s Ramesh Chand Agrawal has been engaged as Haulage Contractor. It is submitted that the petitioners No. 1, 4 to 8, 10, 13,15 to 18, 20 and 21 were not at all employed in the Haulage job entrusted in the Contractor. They have made a wrong statement that they were working for the Haulage Contractor. It is stated that the Annexure-1 filed with the petition itself shoes that they were the employees of the Contractor and they were not at all employed by the Corporation. There was no relationship of Master and Servant between the petitioners and respondent corporation. It is again denied that they were working on permanent and continuous job under the direct control of the respondents. as submitted earlier, the arrangement of engagement of haulage contractor has been made acter complying with the provisions of the Contract Labour (Regulation & Abolition) Act, 1970. The payment of P.F. if any must have been made by the contractor itself and not by the respondent- Corporation."

In view of the aforesaid discussion, I find force in the submission of the learned counsel for the respondents that the disputed question of facts are involved in this case and as such writ petition under Article 226 is not maintainable. The petitioners have a remedy to approach Industrial Court (Central) for their grievance.

For the reasons recorded above, the writ petition is dismissed. No order as to costs.

Sd/-

8 June, 2004
ASWAL